

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARK E. SUNNERGREN,  
Plaintiff,

v.

DARRIN BRIGHT, et al.,  
Defendants.

Case No. 22-cv-00746 BLF (PR)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

Mr. Mark E. Sunnergren, a state prisoner, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983 regarding deficient medical care at Salinas Valley State Prison (“SVSP”). Dkt. No. 1. In a separate order, the Court dismissed co-plaintiffs Roger Andrew Hartley and Joseph Suess from this action. Dkt. No. 20. Accordingly, this action is proceeding only on Mr. Sunnergren’s claims, and all references to claims and allegations regarding co-plaintiffs shall be disregarded and stricken from the complaint. The Court shall refer to Mr. Sunnergren as “Plaintiff” for the remainder of this order.

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a

1 prisoner seeks redress from a governmental entity or officer or employee of a  
 2 governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any  
 3 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim  
 4 upon which relief may be granted or seek monetary relief from a defendant who is immune  
 5 from such relief. *See id.* § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally  
 6 construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

7 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
 8 elements: (1) that a right secured by the Constitution or laws of the United States was  
 9 violated, and (2) that the alleged violation was committed by a person acting under the  
 10 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

#### 11 **B. Plaintiff's Claims**

12 Plaintiff names the following as Defendants in this action: (1) Darrin Bright, Chief  
 13 Physician and Surgeon at SVSP; (2) Kim Kumar, Chief Medical Executive; (3) A.  
 14 Ssembajjwe ("Adams"), LVN; (4) F. Ssempebwa ("Francis"), RN; (5) A. Onemaobi-  
 15 Agboli ("Ada"); (6) Chief Executive Officer (CEO) – "Cant..."; and (7) Rachel Ross,  
 16 M.D.; and (8) "Does 1-100, Inclusive." Dkt. No. 1 at 2.

17 Plaintiff's statement of facts begins with generalized allegations against Defendant  
 18 Dr. Bright and the SVSP medical staff who "disregarded class member's serious medical  
 19 needs, including severe intractable pain and other medical conditions that are disabling in  
 20 nature." Dkt. No. 1 at 3. Plaintiff claims that Dr. Bright knew that "plaintiffs were  
 21 prescribed an effective regi[men] of the drug, Gabapentin, for both seizures and nerve  
 22 pain" but would cancel the prescriptions "without just cause," resulting in "plaintiffs  
 23 suffer[ing] seizures and severe, intractable nerve pain." *Id.* Plaintiff claims that since  
 24 becoming the Chief Physician and Surgeon in 2017, Dr. Bright has used his position of  
 25 authority to deny Plaintiff his needed seizure medication, Gabapentin, causing Plaintiff to  
 26 "come to further harm from petit-mal and grand mal seizures, as well as 'auras.'" *Id.* at 5.  
 27 Plaintiff claims he is now suffering added discomfort and pain due to Dr. Bright's actions.

1 *Id.* at 6. As relief, Plaintiff seeks damages, including punitive damages, as well as  
2 injunctive and declaratory relief. *Id.* at 4.

3 In support, Plaintiff attaches copies of various health care appeals regarding his  
4 treatment and excerpts from his medical file under Exhibit A. Dkt. No. 1-1. However,  
5 these papers involve matters from the previous decade and nothing recent from the past  
6 year or so, which raises timeliness concerns. The documents include the following: an  
7 institutional level response dated March 1, 2018, to a grievance filed on December 26,  
8 2017, Dkt. No. 1-1 at 2-3; a health care grievance filed on December 12, 2017, *id.* at 4-7;  
9 medical progress note dated February 24, 2012, *id.* at 8-10; a health care appeal dated  
10 March 31, 2014, *id.* at 11-12; a notice regarding a rejected grievance dated February 25,  
11 2014, *id.* at 11; progress notes dated August 20, 2013, *id.* at 15; a health care appeal dated  
12 February 10, 2014, *id.* at 18-19; a non-formulary drug request dated February 26, 2014, *id.*  
13 at 20; health care appeal assignment notice at the first level of appeal dated October 26,  
14 2016, *id.* at 21; a health care appeal dated October 21, 2016, *id.* at 22-23; a reasonable  
15 accommodation request dated September 2, 2016, *id.* at 24-25; a response to the reasonable  
16 accommodation request dated September 16, 2016; a rejection notice regarding an appeal,  
17 dated September 19, 2016, *id.* at 28; more responses to a reasonable accommodation  
18 request, dated August 30, 2016, and April 22, 2016, *id.* at 29-30; a reasonable  
19 accommodation request dated August 7, 2018, *id.* at 32-33; a health care services,  
20 physician request for services dated August 30, 2017, *id.* at 35; inmate health care appeal  
21 dated March 31, 2014, *id.* at 39-40; and a health care services, physician request for  
22 services dated January 20, 2019, *id.* at 41.

23 Liberally construed, Plaintiff is attempting to state an Eighth Amendment claim  
24 based on deliberate indifference to serious medical needs. Deliberate indifference to  
25 serious medical needs violates the Eighth Amendment's proscription against cruel and  
26 unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *McGuckin v. Smith*, 974  
27 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds*, *WMX Technologies, Inc. v.*

1 *Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (*en banc*). A determination of a “deliberate  
2 indifference” claim involves an examination of two elements: the seriousness of the  
3 prisoner’s medical need and the nature of the defendant’s response to that need. *Id.* at  
4 1059.

5 Regarding the first element, a serious medical need exists if the failure to treat a  
6 prisoner’s condition could result in further significant injury or the “unnecessary and  
7 wanton infliction of pain.” *Id.* The existence of an injury that a reasonable doctor or  
8 patient would find important and worthy of comment or treatment, the presence of a  
9 medical condition that significantly affects an individual’s daily activities, or the existence  
10 of chronic and substantial pain are examples of indications that a prisoner has a serious  
11 need for medical treatment. *Id.* at 1059-60. With regards to the second element, a prison  
12 official is deliberately indifferent if he or she knows that a prisoner faces a substantial risk  
13 of serious harm and disregards that risk by failing to take reasonable steps to abate it.  
14 *Farmer* at 837. The prison official must not only “be aware of facts from which the  
15 inference could be drawn that a substantial risk of serious harm exists,” but “must also  
16 draw the inference.” *Id.* If a prison official should have been aware of the risk, but did not  
17 actually know, the official has not violated the Eighth Amendment, no matter how severe  
18 the risk. *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 (9th Cir. 2002).

19 Plaintiff’s complaint fails to state sufficient facts to support a deliberate indifference  
20 claim against any of the named Defendants. Assuming he had a serious medical need,  
21 nowhere in the complaint does Plaintiff allege that any Defendant was subjectively aware  
22 that he specifically was facing a substantial risk of serious harm and disregarded that risk  
23 by failing to take reasonable steps to abate it. In fact, he does not mention any of the  
24 named defendants in his statement of facts, except for Dr. Bright. Furthermore, the  
25 allegations against Dr. Bright are also insufficient as they are mostly generalized as to all  
26 “plaintiffs.” This is not sufficient to state an individualized claim by Plaintiff.  
27 Furthermore, there is no allegation that Dr. Bright was aware that by cancelling Plaintiff’s  
28

1 Gabapentin medication, Plaintiff would face a substantial risk of harm and took no  
 2 reasonable steps to abate it. Rather, Plaintiff asserts that Dr. Bright “knew or should have  
 3 known” that his actions were below the acceptable standard of care. Dkt. No. 1 at 6.  
 4 However, a claim of medical malpractice or negligence is insufficient to make out a  
 5 violation of the Eighth Amendment. *See Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir.  
 6 2004); *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002); *Franklin v. Oregon*, 662  
 7 F.2d 1337, 1344 (9th Cir. 1981).

8 Plaintiff shall be granted leave to amend to file an amended complaint that sets forth  
 9 sufficient facts to state a § 1983 claim against each named Defendant. Plaintiff must also  
 10 limit the allegations in the complaint to his own medical treatment, and not that of any  
 11 other prisoner. Lastly, Plaintiff should focus on more recent actions by Defendants that  
 12 amount to deliberate indifference to his serious medical needs to ensure his claims are  
 13 timely under California law. In California, the general residual statute of limitations for  
 14 personal injury actions is the two-year period set forth at California Civil Procedure Code  
 15 § 335.1 and is the applicable statute in § 1983 actions.<sup>1</sup>

16 In preparing an amended complaint, Plaintiff should keep the following in mind.  
 17 Liability may be imposed on an individual defendant under § 1983 only if Plaintiff can  
 18 show that the defendant proximately caused the deprivation of a federally protected right.  
 19 *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). A person deprives another of a  
 20 constitutional right within the meaning of section 1983 if he does an affirmative act,  
 21 participates in another’s affirmative act or omits to perform an act which he is legally  
 22 required to do, that causes the deprivation of which the plaintiff complains. *See Leer*, 844  
 23 F.2d at 633.

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24  
 25 <sup>1</sup> California Civil Procedure Code section 352.1 recognizes imprisonment as a disability  
 26 that tolls the statute of limitations when a person is “imprisoned on a criminal charge, or in  
 27 execution under the sentence of a criminal court for a term of less than for life.” Cal. Civ.  
 28 Proc. Code § 352.1(a). The tolling is not indefinite, however; the disability of  
 imprisonment delays the accrual of the cause of action for a maximum of two years. *See*  
*id.*

1 **CONCLUSION**

2 For the foregoing reasons, the Court orders as follows:

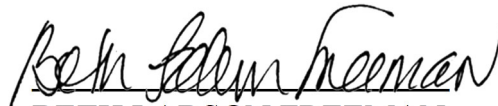
3 1. The complaint is **DISMISSED with leave to amend**. Within **twenty-eight**  
 4 **(28) days** of the date this order is filed, Plaintiff shall file an amended complaint to correct  
 5 the deficiencies described above. The amended complaint must include the caption and  
 6 civil case number used in this order, Case No. 22-00746 BLF (PR), and the words  
 7 “AMENDED COMPLAINT” on the first page. If using the court form complaint, Plaintiff  
 8 must answer all the questions on the form in order for the action to proceed. The amended  
 9 complaint supersedes the original, the latter being treated thereafter as non-existent.  
 10 *Ramirez v. Cty. Of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015). Consequently,  
 11 claims not included in an amended complaint are no longer claims and defendants not  
 12 named in an amended complaint are no longer defendants. *See Ferdik v. Bonzelet*, 963  
 13 F.2d 1258, 1262 (9th Cir.1992).

14 2. **Failure to respond in accordance with this order in the time provided**  
 15 **will result in the dismissal with prejudice of this action for failure to state a claim,**  
 16 **without further notice to Plaintiff.**

17 3. The Clerk shall include two copies of the court’s complaint with a copy of  
 18 this order to Plaintiff.

19 **IT IS SO ORDERED.**

20 **Dated: \_\_June 16, 2022\_\_**

  
 BETH LABSON FREEMAN  
 United States District Judge